

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

PHILLIP RANDALL TILLIE #636229

Case No. 2:20-cv-177

Plaintiff,

Hon. Hala Y. Jarbou
U.S. District Judge

v.

MDOC et al

Defendants.

/

ORDER TO PROCEED IN FORMA PAUPERIS
AND FOR PAYMENT OF FILING FEE ON APPEAL

This is a civil rights action brought by a state prisoner pursuant to 42 U.S.C. § 1983. Plaintiff's action was dismissed by the Court on July 30, 2021. Plaintiff has sought leave to proceed *in forma pauperis* on appeal.

The fee for appealing a civil action is \$505.00. Normally, a plaintiff must pay a portion of the appellate filing fee as an initial partial filing fee. *McGore*, 114 F.3d at 611. The initial partial filing fee is 20 percent of the greater of (a) the average monthly deposits to the prisoner's account; or (b) the average monthly balance in the prisoner's account for the six-month period immediately preceding the filing of the complaint. 28 U.S.C. § 1915(b)(1); *McGore*, 114 F.3d at 606-07, 611. According to the certified copy of Plaintiff's prison trust account statement, Plaintiff had an average monthly deposit of \$258.33 during the last six months. Twenty percent of Plaintiff's average monthly deposits is \$51.67. However, according to Plaintiff's prison trust account statement, Plaintiff was without sufficient financial resources to pay the

initial partial filing fee at the time the appeal was filed. Therefore, pursuant to 28 U.S.C. § 1915(b)(4), Plaintiff must be allowed to bring this case without payment of the initial partial filing fee. *See McGore*, 114 F.3d at 606.

Although § 1914(b)(4) permits Plaintiff to avoid the payment of an initial partial filing fee at this time, the Court is still required to impose an initial partial filing fee of \$51.67 and, when funds become available, Plaintiff must pay this fee:

Even if the account balance is under ten dollars, prison officials must still forward payments to the district court to pay the initial partial filing fee. The ten-dollar rule of § 1915(b)(2) is applicable to fees and costs due only after the initial partial filing fee is paid. Once the initial partial filing fee is paid in full, the ten-dollar and twenty-percent requirements of § 1915(b)(2) become applicable.

McGore, 114 F.3d at 606.

Once Plaintiff has paid the initial partial filing fee, he must pay the remainder of the \$505.00 filing fee through monthly payments of 20 percent of the preceding month's income credited to Plaintiff's prison trust fund account. *See* 28 U.S.C. § 1915(b)(2); *McGore*, 114 F.3d at 606. These payments will be forwarded by the agency having custody of Plaintiff to the Clerk of this Court each time the amount in Plaintiff's trust account exceeds \$10.00, until the filing fee of \$505.00 is paid in full. *See* 28 U.S.C. § 1915(b)(2); *McGore*, 114 F.3d at 607-08; *Hampton v. Hobbs*, 106 F.3d 1281, 1284 (6th Cir. 1997). The check or money order shall be payable to "Clerk, U.S. District Court" and must indicate the case number in which the payment is made. If the amount in Plaintiff's account is \$10.00 or less, no payment is required for that month. *See Hampton*, 106 F.3d at 1284-85.

In light of the foregoing, the Court orders the following:

IT IS ORDERED that leave to proceed *in forma pauperis* on appeal is granted and Plaintiff may proceed *in forma pauperis* without payment of an initial partial filing fee because Plaintiff was without sufficient financial resources at the time the appeal was filed. Plaintiff will remain liable for the initial partial filing fee of \$51.67 as funds become available.

IT IS FURTHER ORDERED that the agency having custody of Plaintiff shall collect the initial partial filing fee of \$51.67 as soon as funds become available. After the initial partial filing fee has been paid, the agency having custody of Plaintiff shall collect the remaining filing fee. As outlined above, each month that the amount in Plaintiff's account exceeds \$10.00, the agency shall collect 20 percent of the preceding month's income and remit that amount to the Clerk of this Court. The agency shall continue to collect monthly payments from Plaintiff's prisoner account until the entire filing fee of \$505.00 is paid.

Dated: October 5, 2021

/s/ Maarten Vermaat
MAARTEN VERMAAT
U.S. MAGISTRATE JUDGE

SEND REMITTANCES TO THE FOLLOWING ADDRESS:

Clerk, U.S. District Court
399 Ford Federal Building
110 Michigan Street, NW
Grand Rapids, MI 49503

All checks or other forms of payment shall be payable to "Clerk, U.S. District Court."